

LICENSING SUB COMMITTEE C

A meeting of Licensing Sub Committee C was held on 26 November 2010.

PRESENT: Councillor Taylor (Chair); Councillors Lancaster and Williams.

OFFICERS: B Carr, L Cummins, C Cunningham and T Hodgkinson.

ALSO IN ATTENDANCE: Fiona Hellier – Cleveland Police, Licensing Unit
Liam O'Brien – Police Legal Representative
Tim Shields – Trust Inns - Legal Representative
Hugo Broadfoot – Trust Inns – Business Development Manager

**** DECLARATIONS OF MEMBERS' INTERESTS**

There were no Declarations of Interest made by Members at this point of the meeting.

LICENSING ACT 2003: REVIEW OF PREMISES LICENCE FOLLOWING SUMMARY REVIEW – THORNTREE PUBLIC HOUSE, MIDDLESBROUGH - REF. NO. MBRO/PR0347/019968

A report of the Head of Community Protection had been circulated outlining an application for a Review of Premises Licence for The Thorntree Hotel, The Greenway, Thorntree, Middlesbrough – Ref No MBRO/PR0347/019968.

Summary of current Licensable Activities

Sale of alcohol, Live, Recorded Music, Films, Indoor Sporting events

Summary of current hours of Licensable Activities

Sale of Alcohol	10.00am – 11.30pm	Monday to Sunday
All other licensable activities	10.00am – 12 midnight	Monday to Sunday

Full details of the current premises licence were attached at Appendix 1 to the submitted report.

The Chair introduced those present and outlined the procedure to be followed at the meeting.

The Business Development Manager from Trust Inns was present at the hearing accompanied by the Legal Representative from Trust Inns, and confirmed that a copy of the report and Regulation 6 Notice had been received.

Details of the Application

Members were reminded that on 2 November 2010, Cleveland Police had made an application for a Summary Review of the above premises licence following concerns in relation to serious crime and/or disorder at the premises (attached at Appendix 2 to the report). A Summary Review Hearing was held on 3 November 2010 and the decision of the Licensing Sub Committee was to suspend the licence with immediate effect, as an interim step pending the full Review Hearing.

The Principal Licensing Officer advised that a further representation had been received from the Principal Environmental Health Officer on 9 November 2010, on the grounds of the prevention of public nuisance (attached at Appendix 3 to the report).

In Appendix 2 of the submitted report Cleveland Police had provided a summary of the reasons for requesting a review.

Members were advised that the Police had attended the Thorntree Public House at 1.15am on 30 October 2010 and executed a warrant under Section 23 of the Misuse of Drugs Act 1971. The warrant was executed following information received from members of the public regarding the management of the premises with regard to:

- The unauthorised sale of alcohol outside of the licensed operating hours on Fridays and Saturdays;
- The alleged sale of drugs on the premises and;
- The fact that people were being allowed to smoke on the premises.

The Police Legal Representative advised the Committee that since the previous hearing, the Police and the Premises Licence Holder had held numerous discussions with regard to the management of the premises. He acknowledged that Trust Inns had taken a sensible approach to the issue and as a consequence, the Police and the Premises Licence Holder had proposed a number of conditions in respect of the following to help prevent any future problems with the management of the premises:

- Premises holder to ensure that individuals must be able to look into the premises and must ensure that curtains and blinds on the premises remain open at all times;
- For any application to vary the Designated Premises Supervisor, the Premises Licence Holder to obtain prior approval of Cleveland Police of proposed individual prior to the submission of an application;
- Regular documented toilet checks to be carried out at the premises in order to identify the use or supply of illegal substances. A suitable drug detection product, approved by Cleveland Police, to be used to detect any illegal substances, with notices displayed in the toilets notifying patrons that such products are in use;
- The Premises Licence Holder to carry out monthly checks to ensure that drug testing in the toilets was in operation and that such checks were documented. The Premises Licence Holder also to monitor the drugs register/drugs box activity within the premises and ensure any suspicious findings were reported to the Police;
- The Premises to be fitted with suitable internal and external CCTV as specified by the Police and that a suitable person be trained in the operation of the CCTV;
- That any requests for CCTV footage from a Responsible Authority be produced within 24 hours, or immediately if urgently required for investigations of serious crime;
- Notices to be displayed on the premises notifying patrons that CCTV is in operation.

The Committee was informed that it was intended that the premises remain closed until the beginning of January 2011.

Members queried whether all the rooms were visible from the outside of the premises. It was confirmed that all the rooms had windows in them with the exception of the toilets, which had frosted glass in the windows.

A Member raised concern regarding the use of the metal bar across the door of the premises to prevent entry. The Police advised that all exits should be in a position where entry could be made quickly in the event of an emergency.

A Member queried whether anybody had discussed the proposed agreements between the Police and the Premises Licence Holder with surrounding residents. Members expressed concern that residents were afraid to make complaints or that the complaints that had been made were anonymous.

The Committee was advised that the Police intended to work more closely with the Premises Licence Holder and that the premises would be more closely monitored. The two brothers who had previously been involved in the running of the premises would be prevented from having any further involvement and would be prevented from entering the building.

The Trust Inns Legal Representative advised that a representative from Trust Inns would visit the premises on a monthly basis and would view the CCTV footage. He advised that the premises had been owned by Trust Inns for a period of years and that it was only over the last few months that there had been a problem with the operation of the premises. Trust Inns had only become aware of the

problem when they received representations from the Police and they had intervened as soon as they were aware there was a problem. The Trust Inns Legal Representative advised the Committee, that the problems associated with the premises had been addressed by the removal of the tenant. The current Designated Premises Supervisor was due to be formally removed from the licence and Trust Inns had voluntarily closed the premises until the beginning of January 2011.

The Committee was advised that over the last 2 years there had been a number of tenants at the premises in a short space of time, but previous to that, the tenant had been in place for over 11 years. It was highlighted that Trust Inns intended to be the Premises Licence Holder to ensure that they would retain a greater responsibility for the premises.

The Chair referred the Committee to the Guidance issued under section 182 of the Licensing Act 2003, in particular, Paragraphs 11.17, 11.25 and 11.26, in respect of powers of a licensing authority on the determination of a review. Reference was made to the fact that the Committee could consider revoking the licence. The guidance stipulated that certain criminal activities such as the sale and distribution of Class A drugs and the laundering of proceeds of drugs crime should be treated particularly seriously.

The Legal Representative from Trust Inns advised that ordinarily, he would agree that the Committee would be well within their rights to consider that the licence be revoked, if the situation with the premises had been a long term problem. He emphasised, however, that Trust Inns had reacted quickly and had worked alongside the Police to rectify the problem. He advised that the decision to revoke a licence should be a proportionate response, but the Committee should take the fact that Trust Inns had worked with the Police to alleviate the problems into consideration. It was highlighted that there were ongoing criminal investigations in terms of some of the people identified in the report.

The Committee was advised that the Premises Licence Holder did not currently have a prospective tenant in place to take over the tenancy of the premises. It would take time to vet and agree with the Police, a suitable tenant and financial checks and details of past work history were required of any potential tenants.

A query was raised regarding the monthly checks, proposed by the Police in the list of suggested conditions for the premises licence. The Committee was advised that new tenants would usually be visited every week in the first instance, then on a 4 – 6 weekly basis thereafter. It was highlighted that the current licence stipulated that the drug situation should be checked on a monthly basis. The Committee was advised that a diary of visits made by the Premises Licence Holder, to the premises was currently retained and countersigned by the Manager with a record of what was checked on each occasion. The Committee was advised that some visits to the premises were organised diarised visits and others were spot check visits.

The representative from Community Protection highlighted that there had been no complaints in respect of noise prior to the latest problems and as a consequence it was considered that the conditions currently placed on the licence in respect of noise control were adequate.

A query was raised by the Council's Principal Legal Officer in respect of how far away from residential properties the premises were located. The Committee was advised that the premises were approximately 35 feet away from residential properties. Reference was made to Section 42 of Middlesbrough Council's Licensing Policy in relation to the Licensing Act 2003, which stipulated that the Licensing Authority will normally encourage a closing time of 11pm for licensed premises situated in predominantly residential areas.

The Trust Inns Legal Adviser requested that the Committee take into consideration that the current problems had occurred for a short period of time for approximately 8 weeks. He requested that the hours currently listed on the licence be retained.

The Principal Licensing Officer advised the Committee that an application to transfer and vary the licence for the premises had been approved on 30 September 2005. Objections had been received from the Police and the Environmental Health Officer; however the licence was approved to allow the sale of alcohol from 10.00am – 11.30pm on Monday to Sunday.

The Committee noted that the Premises Licence Holder had worked with the police to reach an agreement. However in order to ensure the Premises would be properly controlled and criminal activities prevented, the Committee considered the additional conditions to be necessary, in particular to the Tenant also being the Designated Premises Supervisor, Premises Licence Holder checks, continued presence of a personal licence holder on weekends and staff training. In addition, in view of these activities including the breaches and disturbances specified by Environmental Health at the premises which are situated in a predominantly residential area, the Committee considered it necessary to reduce the hours for the sale of alcohol and entertainment to 11.00pm in line with the Council's policy.

The Committee considered that the amendments to the CCTV provision, in particular the internal management system to be devised by the Premises Licence holder, were necessary to ensure the Premises Licence Holder retained some control over the operation of the system in order to deter illegal activities at the premises and to assist the police in evidence gathering should such activities occur.

DECISION

In reaching its decision, the Committee considered the application, representations from the police and the Premises Licence holder and the agreement between them. It also considered the representations from Environmental Health and the responses it received to questions posed to the parties.

The Committee also considered Government Guidance, the Council's policy and licensing objectives.

The Committee decision was to permit the continuation of the Premises Licence subject to the following suspension and conditions to be imposed on the licence:

1. That the current Designated Premises Supervisor be removed from the Premises Licence.
2. That the licensable activities be suspended until a new Tenant / Designated Premises Supervisor is appointed or until the 2 January 2011, whichever is the later.
3. That the licensable activities under the Premises Licence be permitted from 10.00am to 11.00pm Monday to Sunday inclusive.
4. That the Tenant appointed by the Premises Licence Holder is also to be the Designated Premises Supervisor.
5. That the Tenant / Designated Premises Supervisor or a variation to the Tenant / Designated Premises Supervisor be approved by an Officer from Cleveland Police Licensing Unit before an application is made to the Licensing Officer. Such approval should not be unreasonably withheld.
6. That a Personal Licence Holder be present at the premises on Friday and Saturdays and on Fridays, Saturdays and Sundays on bank holiday weekends from 7.00pm until the premises close when licensable activities are taking place.
7. That unless and until an agreement is reached with the Cleveland Police Licensing Unit as to longer intervals, toilet checks shall be conducted every hour in order to identify any persons using or supplying illegal substances. The Designated Premises Supervisor holder to ensure all toilet checks are recorded specifying the date, time, person undertaking the check, checking products used if any and the findings. Such records to be maintained at the premises and to be made available on request or during an inspection to a police officer or licensing enforcement officer.
8. That a suitable drug detection product to be approved by the Cleveland Police Licensing Unit be used at least once a day by persons checking the toilets to identify any illegal substances

unless and until an agreement is reached with the Cleveland Police Licensing Unit as to longer intervals. The Designated Premises Supervisor to ensure that a record is kept at the Premises specifying the date, product used and locations used to be made available on request or during an inspection to a police officer or licensing enforcement officer.

9. That clear signage to be prominently displayed in the toilets informing patrons that products set out in condition 8 above are being used.
10. That the Premises Licence Holder shall carry-out checks on a monthly basis with the Tenant / Designated Premises Supervisor to ensure that all the licensing conditions are being complied with and records maintained. The Premises Licence Holder shall record all checks specifying the date, time, person undertaking the check and in respect of each separate condition checked the condition and the findings in relation to that condition. This record or a copy of it is to be maintained at the Premises and to be made available on request or during an inspection to a police officer or licensing enforcement officer.
11. That all staff receive training at the commencement of their appointment and every six months thereafter in relation to the conditions on the licence, underage sales and sales to persons who are drunk. Documented training records relating to every employee (paid or unpaid) to be kept on the premises. The records to specify the date, time and content of the training to be signed by the Designated Premises Supervisor and the employee receiving the training and countersigned by the Premises Licence Holder's authorised employee.
12. That the conditions on the Premises Licence in relation to CCTV be removed and replaced with the following conditions:
 - 12.1. That the Premises Licence Holder ensures that the premises are fitted with internal and external colour digital CCTV to be recording at all times and to incorporate a means of transferring images from the hard drive to a format that can be played back on any computer. All CCTV footage to be retained for a minimum of 31 days and to be kept, together with any CD roms in a secure and locked cabinet. That the Premises Licence holder ensures the CCTV system is maintained in good working order
 - 12.2. That the Premises Licence Holder puts in place an internal management system devised to prevent employees or patrons at the premises from manually erasing CCTV footage currently retained for 31 days or manually preventing the CCTV system from recording for reasons other than maintenance of the system which must be recorded in the incident book. The internal management system must require authorised employees to access the CCTV system via a password. The monitoring of the Tenant/Designated Premises Supervisor's and other employees performance/capabilities or otherwise to be documented by the Premises Licence Holder.
 - 12.3. The Designated Premises Supervisor and such other employee authorised by the Premises Licence Holder shall be trained in the use of the CCTV system and, upon receipt of a request for footage from a Responsible Authority, produce the footage in a format that can be played back on any computer within 24 hours or immediately if required for investigations of serious crimes.
 - 12.4. In the event of a system malfunction the Designated Premises Supervisor or such other employee authorised by the Premises Licence Holder must immediately notify the Principal Licensing Officer and the Cleveland Police Licensing Unit. Details of the malfunction must be recorded in the Premises Licence incident book and the Principal Licensing Officer and the Cleveland Police Licensing Unit to be notified when the system is again operational.
 - 12.5. That at least two notices shall be displayed in prominent positions in the premises notifying patrons that CCTV is in operation.

13. Any measure capable of preventing an individual from looking into the premises through any ground window shall be prohibited at all times. This includes, but is not limited to, the drawing of any curtains or the closing of any blinds.
14. That a bar of any kind must not be used to lock the access door to the Premises at any time when staff and patrons are present at the Premises.
15. All other conditions on the licence to remain.

REASONS

The conditions have been imposed in order to prevent crime and disorder and nuisance at the Premises. It was clear from the expedited review and necessity for interim steps that serious breaches of the conditions and criminal activity had occurred at the premises and neither the Premises Licence Holder, Tenant, Designated Premises Supervisor nor other Personal Licence Holder were in control of the premises during such illegal activities.